X. Section 63, Arrests.

Section 233 of the Indian Penal Code provides for a more serious kind of offence than such an act of negligence as that of a Forest Guard who negligently suffers a person arrested on suspicion of having committed a forest offence to escape, which can only be punished departmentally by fine, suspension or dismissal.*

Procedure to be followed in giving bail.

308. The Conservators of Forests should issue orders to their subordinates that, in cases coming under section 63 of the Indian Forest Act, when the nearest Magistrate's Court is at a distance from the scene of the alleged offence and a Police station is within convenient access, an accused person who is ready and willing to give bail should be taken for that purpose to the Police station.

The Police Superintendents should be directed in communication with the District Magistrates, to issue orders to officers in charge of Police stations requiring them in these cases to take bail in accordance with Chapter XXXIX of the Criminal Procedure Code. It is not desirable to increase the number of Police stations, merely for the sake of giving a wider operation to these orders.†

XI. Section 67, Powers to compound offences.

A. Orders of Government regarding compounding cases and prosecution of offences.

Treatment of trivial offences.

309. (1) It is in the opinion of His Excellency the Governor in Council most undesirable that ignorant villagers should be prosecuted in the criminal Courts for taking from the Government forests a few twigs or small branches, or a little brushwood of inappreciable value. Such injudicious severity on the part of the Officers of the Forest Department is calculated to do more harm than good and to excite widespread dissatisfaction and angry feelings. In no instance, at all events, should a person be prosecuted for a first offence of so exceedingly trivial a nature. A warning on the part of the Forest Officer would suffice. But if after being detected and warned once or twice, the same person is again discovered cutting Government trees the circumstances of the case would be altered, and wilful and repeated infractions of the law may form a suitable and proper ground for criminal prosecution. As far as possible, however, such prosecutions should be avoided, and recourse should only be had to them when real injury is being caused to the Government forests, and when there is good reason to believe that the offender is deliberately and of set purpose transgressing the law.

* L. R. No. 1049, dated 5th September 1881, *vide* Government Resolution No. 5459, dated 21st September 1881.

† Government Resolutions No. 1702, dated 4th March 1884; and No. 8279, dated 2nd December 1885; and Government Notification No. 10364, dated 24th December 1885.

XI. Section 67, Powers to compound offences.

A. ORDERS OF GOVERNMENT REGARDING COMPOUNDING CASES AND PROSECUTION OF OFFENCES—*continued.*

309a. (2) His Excellency the Governor in Council desires that these orders be strictly observed by all officers, concerned, and should be applied to cases reported for departmental disposal by Forest Officers empowered under section 67 of the Forest Act as well as to prosecutions in the Magistrate's Court. Arrests and punishments of all kinds for *trivial* forest offences should be avoided. It must at the same time be remembered that the gravity of a forest offence is not always to be measured by the amount of actual damage done to forest property. When mischief of even small actual money value has been deliberately committed, or when there has been persistent infraction of forest rules, the breach of law is aggravated by the intention with which it was committed and the offender may properly be punished. But it is necessary that punishment should be preceded by judicial investigation and that in cases of the kind just noticed the intentions of the offenders as well as their acts should be weighed, on the consideration of evidence recorded under the sections prescribed by the law and after the accused persons have had opportunity for making their defence in the presence of the adjudicating officers. The Magistrates' Courts established in every táluka afford sufficient and accessible means for the trial of cases of forest offences in which Forest Officers may consider the infliction of punishment to be necessary, and the Governor in Council sees no reason in the circumstances of the forests of the Presidency that would call for the removal of such cases from the cognizance of the regular Courts and their reference to departmental tribunals specially constituted under the provisions of the Forest Act.

The gravity of the case is not always represented by the money value of the damage.

309b. (3) On the other hand, the Governor in Council is not prepared to accept at once the recommendation that the operation of section 67 should be placed in absolute abeyance. The Governor in Council does not contemplate the punishment of *trivial* forest offences either through prosecutions in the Magistrates' Courts, or through departmental proceedings; but the Government would not object, in the case of offences in which substantial damage has been done to the forests, or the payment of forest dues has been evaded, under circumstances that do not call for the infliction of exemplary or deterrent punishment, to their being compounded by the acceptance of compensation equivalent in value to the damage done or the amount of the dues evaded. It appears that the provisions of section 67 may probably be worked with benefit to the subject and to the Forest Department in a number of cases, under the limitation abovementioned and provided that the proceedings of Forest Officers under that section are subjected to the supervision of the Collectors.

Cases which may be compounded.

309c. (4) The attention of officers exercising the powers prescribed by section 67 of the Forest Act is directed to the observations in paragraphs 5 and 10 of the report [given below] of the Remembrancer of Legal Affairs, No. 1246, dated 25th August 1892.

Warning to Forest Officers to be careful in exercising powers under section 67 of the Act.

XI. Section 67, Powers to compound offences.

A. ORDERS OF GOVERNMENT REGARDING COMPOUNDING CASES AND PROSECUTION OF OFFENCES—*continued.*

It is open to serious question whether some Forest Officers have not exceeded their lawful powers in making arrests and detaining offenders and in holding inquiries into alleged forest offences, as well as in paying rewards for detection out of amounts accepted as compensation. The attention of all officers concerned is directed to the observations on these points in paragraphs 6, 7, 8 and 10 [given below] of the report of the Remembrancer of Legal Affairs above referred to.*

Extract paragraphs 5 to 10 of the report of the Remembrancer of Legal Affairs, No. 1246, dated 25th August 1892.

"5. The alternative to payment of compensation is prosecution, and the suspected offender would necessarily be aware that he was liable to prosecution unless compensation is accepted. It rests with the suspected offender to elect whether he will await a judicial decision or tender compensation, and with the officer empowered to consider whether the tender should be accepted. Neither threat of prosecution nor demand of compensation is contemplated by the section.

Alternative procedure which is open to an offender.

"6. It is not, I trust, out of my province to note that the practice referred to in paragraph 10 of the Minute, under which 'sums realized as compensation are usually distributed as rewards among the forest subordinates who detected the cases,' is utterly illegal, as even the Local Government has no power to direct rewards to be paid to officers and informers out of the sums realised under section 67 as compensation. Such power exists under section 75 only as to rewards to be paid out of *fines* and *confiscations* which must be regulated by rules. The Legislature has evidently not thought fit to give the Forest Department power both to assess and to distribute sums accepted in *compensation*.

No rewards can be given out of compensation.

NOTE.—See section 310. Rewards may be granted from funds specially provided.

"7. In the second part of paragraph 13 it is observed that the second sub-clause of section 63 directs persons arrested for forest offences to be taken or sent without unnecessary delay before the Magistrate having jurisdiction. Section 12 of Act V of 1890 adds the words 'or to the officer in charge of the nearest Police station'. The power of arrest exists only where there is reasonable suspicion against the person arrested of his having been concerned in a forest offence punishable with imprisonment for one month or upwards. The Act gives no power of detention or restraint for the purposes described in the third part of paragraph 11 of the Minute, and for mere *cattle trespass*, unaccompanied by opposition to seizure, or by rescue after seizure, except when it is permitted by the offender within the meaning of section 25 (*d*) or section 32 (*g*), it is difficult to see how there can be any power whatever to arrest.

Powers to arrest but not to detain persons.

* Government Resolution No. 7907, dated 6th October 1892.

XI. Section 67, Powers to compound offences.

A. ORDERS OF GOVERNMENT REGARDING COMPOUNDING CASES AND PROSECUTION OF OFFENCES—*continued.*

Concerning Panchâyats.

Maxwell on interpretation of statutes, 358 *et seq.*

"8. With reference to the part of paragraph 13 marked '3rd', I think there can be no doubt that Forest Officers have no power, and cannot be given power, to hold Panchâyats, accept bail or release on bail, accused persons. A strict construction must be placed on section 71, as on all enactments conferring special powers.

No special power is necessary to authorize Forest Officers to take the opinion of a Panchâyat for their own information or that of their superiors. But special power would be requisite and is not given to compel the attendance at such Panchâyat of the accused. The attendance of witnesses as to the amount of damage might be enforced by officers specially empowered in that behalf under section 71 (*a*).

Compensation can only be taken by authorized officers.

"9. There can be no doubt, as observed in paragraphs 13, '4th', that the acceptance of compensation by officers not empowered by name or as holding an office to accept compensation is clearly illegal, and when payment to such unempowered officers is induced by threat of prosecution or by restraint, it might amount to an offence under the Indian Penal Code.

Persons cannot be detained in order to make them comply with such terms.

"10. No detention would be justifiable for the purpose of inducing suspected offender to accede to a particular demand for compensation, nor does section 67 appear to contemplate any *demand* even by an officer empowered to accept."*

Rewards.

310. The remarks in Government Resolution No. 7907, dated 6th October 1892 [given above], purported to draw attention to the apparent illegality of what was supposed to be the practice of the Department, *viz.*, to apply sums realized and compensation for damages, as distinguished from fines, directly to the payment of rewards. They were not intended to be read as withdrawing from Forest Officers the power to granting rewards out of funds provided for the purpose.†

Rewards to informers in cases which have been compounded.

311. In cases compounded under section 67 of the Indian Forest Act, rewards may be granted in accordance with the following rule:—

Rewards to persons contributing to the detection of a case may be given up to a maximum in each case of Rs. 10 and within the limit of the sum realized by the Divisional Forest Officer, and above Rs. 10 and within the limit of the sum realized, by the Conservator.‡

* Government Resolution No. 7907, dated 6th October 1892.
† Government Resolution No 3920, dated 30th May 1893.
‡ Government Resolution No. 8368, dated 16th December 1887.

XI. Section 67, Powers to compound offences.

A. ORDERS OF GOVERNMENT REGARDING COMPOUNDING CASES AND PROSECUTION OF OFFENCES—*continued.*

312. The principles given below consisting of paragraphs 7 to 14 of the report of the Remembrancer of Legal Affairs, No. 1512, dated 17th October 1892, are in accordance with the instructions conveyed in Government Resolution No. 7907, dated 6th idem, and have the approval of Government.

Opinion of the Remembrancer of Legal Affairs on powers conferred by section 67.

The officers empowered under section 67 of the Indian Forest Act should, subject to the procedure laid down in the rules on the subject, satisfy themselves by correspondence as to the facts in each case. They must properly take into consideration consequential or prospective as well as actual damage in deciding whether amounts offered should, or should not, be accepted as compensation for offences committed in stay of further proceedings.*

Determining the gravity of an offence.

Extract from the report of the Remembrancer of Legal Affairs, paragraphs 7 to 14, No. 1512, dated 17th October 1892 :—

(7) One of the objects which Government evidently had in view in directing such departmental enquiry was to prevent compensation being taken in cases which a Court would treat as too trivial to call for punishment. In other words, the departmental enquiry is deemed necessary to ascertain in each case that the offer of compensation has not been improperly induced.

Reasons for the necessity of such departmental inquiries.

(8) The Act requires no inquiry whatever. The only limit which section 67 (*a*) imposes on officers is a pecuniary limit. The Legislature presumably considers that a man would not be likely to offer more than he would expect to lose by a judicial decision. The suspected offender is left to judge for himself as to the adequacy of his offer.

Regarding the extent of compensation liable to be paid.

(9) But, then, the Legislature presupposes that no demand will be made or pressure used on part of the officer empowered to accept compensation.

No pressure to be used on the part of the officer empowered.

(10) The section, in empowering acceptance by implication, requires that the offer should originate spontaneously with the person suspected.

The offer should be spontaneous.

(11) If in practice it could be confidently expected that suspected offenders would always be left thus entirely to exercise their own free will and judgment, there might be little cause for fear that the sums offered and accepted would be unduly penal in amount.

The ideal practice.

(12) But since this ideal freedom of will is not invariably secured in practice, the only means to guard against the exercise of pressure by subordinates seems to be to require officers empowered to accept compensation to ascertain—

(*a*) That appreciable damage has been done.

(*b*) That the offer made is not disproportionally high.

(13) As pointed out in paragraphs 3 and 4 of my No. 1246 of 25th August 1892, the Legislature have left to the Executive Government the power of supplementing the Act in the regulation and control of Forest Officers.

Control of Forest Officers by the Executive Government.

* Government Resolutions No. 8626, dated 3rd November 1892; and No. 1355, dated 17th February 1893.

XI. Section 67, Powers to compound offences.

A. ORDERS OF GOVERNMENT REGARDING COMPOUNDING CASES AND PROSECUTION OF OFFENCES—*continued.*

(14) The Act itself implies that there should be no demand or pressure on the part of Forest Officers. It would be unnecessary and out of place to prohibit by rules action which the Legislature has by implication left unauthorized. But it is within the legitimate scope of rules to provide procedure to guard against such unauthorized action.

Rules may be framed to check unauthorized action.

313. The operation of section 67 of the Indian Forest Act requires to be carefully watched, and any tendency to have recourse to this mode of settlement in doubtful cases where the evidence would be insufficient to secure conviction before Magistrates must be promptly repressed. "Reasonable suspicion," of the commission of a forest offence is essential in every case compounded under section 67, Indian Forest Act.*

The amount of evidence required without which cases should not be compounded.

314. A Forest Officer duly empowered under section 67 of the Indian Forest Act is authorized to accept *money* and not a *promise* to pay the same. If no money is paid and accepted by way of compromise under section 67, the only alternative for the Forest Officer would be to prosecute the party concerned. The object of section 67 is evidently to avoid the worry and harassment attendant on prosecutions, and at the same time to guard the interests of Government against present and prospective loss. The settlement to be effected under that section is essentially an amicable settlement, and it entirely depends on the free will and choice of the suspected offender on the one hand and the Forest Officer on the other. To import, therefore, an element of compulsion, such as the recovery of the money by revenue process, is distinctly opposed both to the letter and the spirit of the provisions of section 67.

Necessity of section 67.

It is clear from the wording of section 67 that the Forest Officer is not to complete the settlement of the case before receipt of the money agreed on, and that any settlement made by him on the mere promise of a suspected offender is null and void.†

314a. 1. Every case of a forest offence should be reported at once by the Forest subordinate, who becomes aware of it, to the Divisional Forest Officer on a form providing for the following particulars :—

(1) Date, locality, and brief description of the offence.

(2) Name, age, caste, occupation, and residence of the offenders, if ascertained, and brief note of what they have to say, and "whether they desire to compound, and if so what is in his opinion the sum for which they should be allowed to compound (stating the reason for fixing the particular amount) and whether the offenders are willing to pay the sum in question."

(3) Value of damage done, property seized, or due evaded, as estimated by reporting officer, and whether offenders accept that estimate, or demand enquiry.

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* Goverment Resolution No. 1899, dated 13th March 1891.
† Government Resolution No. 5905, dated 29th August 1891.

XI. Section 67, Powers to compound offences.

A. ORDERS OF GOVERNMENT REGARDING COMPOUNDING CASES AND PROSECUTION OF OFFENCES—*continued.*

(4) Whether offenders have been arrested or not, if so, to what Magistrate or Police station they have been sent, and why arrest was necessary.

(5) Witnesses cited by either side.

(6) Whether any animals have been seized and pounded, and if so, amount of fees and charges recovered, and whether they were paid by the accused or by other people, so far as these particulars may be readily ascertainable.

(7) Any information the reporting officer may be able to supply as to previous warnings or convictions and other points bearing on the questions, whether any, or exemplary, punishment is needed.

2. On this report the Divisional Forest Officer should ordinarily be able at once to endorse his order directing either that no further action should be taken, or that the offer to compound should be accepted, or that magisterial proceedings should be instituted and the Forest subordinate should thereon report the result. It is of course open to him to make enquiry himself or direct enquiry to be made in order to satisfy himself that the report is correct, if he thinks it necessary to do so, but no unnecessary delay in deciding whether to accept the offer to compound or not should be allowed. The order to accept should specify the time within which and the person to whom payment is to be made, failing which magisterial proceedings will be taken. An order to take magisterial proceedings should provide for any further departmental enquiry which the Divisional Officer may consider necessary as a preliminary to doing so, and should such enquiry go to show that a prosecution could not be sustained, a further order to that effect may be passed. But it will not then be open to the Divisional Forest Officer to resort to proceedings under section 67.

3. The report form should be kept in ordinary duplicates, with appropriate headings and columns for the Divisional Forest Officer's register number and orders, and for the further or final reports, the leaves intended to be the office copies being bound and kept as the counterfoil and the loose leaves used for the reports. The bound books would thus form a current and permanent register of all the proceedings of that particular subordinate, which it should be his duty to produce for examination and check both to his own departmental superiors and to District Officers visiting the neighbourhood of his beat.

4. A register in corresponding form should also be kept by the Divisional Forest Officer in which particulars of each case as reported should be posted up with the orders passed on it. A quarterly abstract of this register should be sent to the Collector for inspection in the same way as magisterial returns.

5. In every case in which the Divisional Forest Officer directs further proceedings to be taken, whether under section 67 or magisterially, in a case in which pound fines and charges have been paid, the reasons for doing so should be clearly stated in the order.

XI. Section 67, Powers to compound offences.

A. ORDERS OF GOVERNMENT REGARDING COMPOUNDING CASES AND PROSECUTION OF OFFENCES—*concluded.*

6. No order should be given to proceed under section 67 in any case in which the Divisional Forest Officer would not be prepared to order magisterial proceedings to be taken under paragraph 2 above, in the event of the accused declining or failing, within a time to be fixed in the order, to comply with the terms of composition offered or agreed to.

7. No restraint should be placed by subordinate forest officers on persons suspected of offences to be made the subject of these reports, except when they fail to satisfy the officer as to their identity and residence or when there is reason to fear they may not be forthcoming when wanted. In such cases the offices concerned should, if the case is one in which in his opinion further proceedings (apart from mere impounding of cattle) are necessary, arrest the offenders and send them to the nearest Magistrate or Police station as required by section 63, making at the same time the usual report to the Divisional Forest Officer. Cases in which the accused has been arrested as above should take their usual course without waiting for the orders of the Divisional Forest Officer. But in case an order to compound is received at any time before such a case is disposed of by the Magistrate having jurisdiction, the Magistrate should be informed of it and asked, if the accused complies with its terms, to discharge him under section 67 (2).

8. The reports proposed above should be prepared by the forest subordinate himself if he can write; if not, by his immediate superior, to whom the facts may be reported verbally if he is within reach, or by the village Kulkarni or Talâti, and when the accused is in attendance, should be read over to him, and countersigned by the Pâtil in token that this has been done before despatch. Any objection the accused may take should be noted.

B. Registration of Offences.

Rules regulating the registration of forest offences.

315. The object which Government has chiefly at heart is that people should be protected against the imposition of unnecessary penalties under pretext of composition for trivial offences and against illegal detentions and undue harassment in the course of proceedings taken with a view to such composition.*

It is clear that this object can only be attained if the Divisional Forest Officer is made acquainted with the discovery of an offence at the earliest possible date and thus placed in a position to watch the course of the subsequent enquiry.

I. First Report.

First Report.

1. Every Forest Guard shall keep a "First Report Book", and immediately on an offence coming to his knowledge shall fill up or cause to be filled up a form of "First Report" which he shall despatch or take to the guard of his round.

* Government Resolution No. 4516, dated 15th June 1895.